

SERVICE DATE – OCTOBER 3, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 205X)

UNION PACIFIC RAILROAD COMPANY–ABANDONMENT EXEMPTION–
IN SUTTER COUNTY, CA

Decided: September 30, 2005

By decision and notice of interim trail use or abandonment (NITU) served on August 6, 2004, the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903 the abandonment by Union Pacific Railroad Company (UP) of a 3.39-mile line of railroad known as the Yuba City Industrial Lead, extending from milepost 136.38 near Marysville, CA, to milepost 139.77 near Colusa Junction, CA, in Sutter County, CA. The exemption was subject to public use, two environmental, and standard employee protective conditions, as well as a trail use condition authorizing a 180-day period for the City of Yuba City (City) to negotiate an interim trail use/rail banking agreement with UP for the right-of-way involved in this proceeding. The negotiating period under the NITU was scheduled to expire on February 2, 2005, but was extended to August 1, 2005, by decision served February 23, 2005.¹

By revised facsimile received on September 26, 2005, the City requests a 180-day extension until January 28, 2006. By facsimile received on September 27, 2005, UP states that it is willing to continue negotiating with the City concerning acquisition of the subject property for trail use and supports the City's request to extend the trail use negotiating period for an additional 180-days until January 28, 2006.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and has indicated its willingness to continue negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended. Under the circumstances, further extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 90 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997). An extension of time will promote the establishment of trails and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d). Accordingly, the NITU negotiating period will be extended until January 28, 2006.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

¹ The public use condition expired on March 4, 2005. The two environmental conditions that were imposed remain in effect.

It is ordered:

1. The City's request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended to January 28, 2006.
3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceeding.

Vernon A. Williams
Secretary